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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS-2019-0009]

Availability of FSIS Food Product Dating Fact Sheet

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; response to comments.

SUMMARY: FSIS is announcing the availability of an updated fact sheet on food product dating. The fact sheet is aimed at reducing food waste through encouraging food manufacturers and retailers that apply product dating to use a "Best if Used By" date label. FSIS recommends the use of a "Best if Used By" date label because research shows that this phrase is easily understood by consumers as an indicator of quality rather than safety. FSIS is also responding to comments received on the previous version of the fact sheet that it announced in the December 2016 *Constituent Update*.

ADDRESSES: A downloadable version of the updated fact sheet is available to view and print at <https://www.fsis.usda.gov/wps/wcm/connect/19013cb7-8a4d-474c-8bd7-bda76b9defb3/Food-Product-Dating.pdf?MOD=AJPERES>.

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SUPPLEMENTARY INFORMATION:

Background

In the United States, approximately 30 percent of the food supply is wasted.¹ Wasted food is the single largest category of material placed in municipal landfills² and much of it likely could have helped feed families in need. Additionally, water, energy, and labor used to produce wasted food could have been used for other purposes.

The Food Safety and Inspection Service (FSIS) administers a regulatory program under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) to protect the health and welfare of consumers. The Agency is responsible for ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, not adulterated, and correctly labeled and packaged. Consequently, FSIS is uniquely positioned to address the problem of wasted meat, poultry, and processed egg products by working with Federal, State, tribal and local

¹ See <https://www.ers.usda.gov/amber-waves/2013/june/ers-food-loss-data-help-inform-the-food-waste-discussion/>.

² See <https://www.epa.gov/facts-and-figures-about-materials-waste-and-recycling/national-overview-facts-and-figures-materials>.

governments, faith-based institutions, industry, and consumers to raise awareness of food waste issues, simplify requirements for donation,³ and share best practices.

On December 14, 2016, FSIS announced in the *Constituent Update*⁴ the availability of and requested comment on a fact sheet aimed at reducing food waste through encouraging food manufacturers and retailers that apply product dating to use a “Best if Used By” date label. FSIS recommended the use of a “Best if Used By” date label because a national survey showed that this phrase is easily understood by consumers as an indicator of food quality rather than food safety.⁵

As FSIS explained in the fact sheet, except for infant formula,⁶ product dating is not required by Federal regulation. Food manufacturers frequently use a variety of phrases such as “Sell By” and “Use By” on product labels to describe quality dates on a voluntary basis. The use of different phrases to describe quality dates has likely caused consumer confusion and

³ In January 2016, FSIS issued Directive 7020.1, which makes it easier for companies to donate wholesome products that may be misbranded or economically adulterated. The Directive is available at <https://www.fsis.usda.gov/wps/wcm/connect/25e1becc-4201-4cc0-a707-c9ed38a2f01c/7020.1.pdf?MOD=AJPERES>.

⁴ https://www.fsis.usda.gov/wps/wcm/connect/589fdc30-1f3e-4901-b594-65fc3b46bcba/ConstiUpdate121616.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=589fdc30-1f3e-4901-b594-65fc3b46bcba.

⁵ See Emily Broad Leib, Christina Rice, Roni Neff, Marie Spiker, Ali Schklair & Sally Greenberg, *Consumer Perceptions of Date Labels: National Survey*, Harvard Food Law and Policy Clinic, National Consumer Institute and Johns Hopkins Center for a Livable Future (May 2016), http://www.chlpi.org/wp-content/uploads/2013/12/Consumer-Perceptions-on-Date-Labels_May-2016.pdf.

⁶ See 21 CFR 107.20(c).

has led to the disposal of food, just because it is past the date printed on the package, food that is otherwise wholesome and safe.

After carefully reviewing all comments received, FSIS made minor changes to the fact sheet. These changes include updating a hyperlink to FSIS's fact sheet on shelf-stable products and adding "Freeze By" to the list of commonly used phrases used on labels to describe quality dates. Additionally, a footnote was added to clarify that while FSIS does not require date labeling for food quality or food safety, FSIS does require a "pack date" for poultry products and thermally processed, commercially sterile products to help the Agency identify product lots and facilitate trace-back activities in the event of an outbreak of foodborne illness.⁷ The updated fact sheet is available on the Agency's website at

<https://www.fsis.usda.gov/wps/wcm/connect/19013cb7-8a4d-474c-8bd7-bda76b9defb3/Food-Product-Dating.pdf?MOD=AJPERES>.

Summary of Comments and Responses

FSIS received 46 comments on the 2016 version of the fact sheet from individual consumers, registered dietitians, employees of food assistance centers, an employee of a food processing company, the chairman of a county legislature, a food inspector, a State environmental protection agency, a trade

⁷ See 9 CFR 381.126 and 9 CFR 431.2(e).

association representing the meat industry, and a policy group associated with a law school. A summary of issues raised by commenters and the Agency's responses follows.

Comments: Most commenters liked the fact sheet and agreed that food manufacturers and retailers should use "Best if Used By" date labels to reduce unnecessary food waste caused by consumer label confusion. These commenters argued that because consumers understand that "Best if Used By" is an indicator of food quality and not food safety, they are less likely to waste food. According to these commenters, consumers know that they can safely eat food after the passage of the "Best if Used By" date. A policy group that supported the fact sheet also noted that ReFED, a non-profit organization committed to reducing U.S. food waste, published a report that stated that "standardizing date labels nationally was the most cost-effective solution to reduce food waste, with the potential to divert 398,000 tons of food waste per year and provide \$1.8 billion per year in economic value."

Several commenters argued that FSIS should go a step further and require food product dating labels. The same policy group mentioned above noted that two of the largest trade groups representing the grocery and manufacturing industries launched a voluntary initiative to standardize date labels on food packages, and that these trade groups also recommended the use

of "Best if Used By" to indicate food quality. The policy group argued that because "Best if Used By" is the label preferred by industry to indicate quality, FSIS should just require "Best if Used By" dates on all meat, poultry, and egg products. Some consumers and a registered dietitian argued that rather than require "Best if Used By" labels, FSIS should require safety-based consume-by date labels.

Response: At this time, FSIS does not believe it is necessary to conduct rulemaking to require "Best if Used By" or safety-based consume-by date labels. As noted above, members of industry are already taking steps to standardize food product dating labels on their own. Additionally, the magnitude in number, diversity, and complexity of products that exist in the marketplace make it difficult to require safety-based consume-by date labels. Food safety after the date of food production largely depends on the environmental, storage, and distribution conditions of the food. Moreover, if companies decided to use conservative safety-based consume-by dates, these labels may cause an increase in the amount of food that is wasted.

Comments: An employee of a food processing company and a food inspector argued that the phrase "Best if Used By" is too wordy for a food product label. The same commenters suggested that FSIS recommend the shorter phrases, "Sell By," "Use By," and "Best By." However, a few consumers argued that "Best if

Used By" is too short and vague. These commenters suggested that FSIS use "Best *Quality* if Used By." A trade association representing the meat industry also argued that "Best if Used By" is too ambiguous for meat and poultry products. According to the trade association, many meat and poultry products are currently labeled with "Use or Freeze By" labels to provide consumers with clear direction and offer an alternative to disposal. The trade association was concerned that consumers would not understand that products with "Best if Used By" labels may be frozen to extend their usability.

Response: FSIS recognizes that because food product labels are small it is important to convey information clearly and concisely. However, FSIS disagrees that "Best if Used By" is too short or too vague. The national survey mentioned above found that 70 percent of adults surveyed understood that "Best if Used By" was an indicator of food quality. Based on the survey results, FSIS believes that the phrase "Best if Used By" is clear and effective. And, while FSIS still recommends that companies use "Best if Used By," the Agency has added "Freeze By" to the list of commonly used labeling phrases in the fact sheet to provide more information to consumers on what the label means.

Comment: A trade association representing the meat industry stated that shelf-life in ready-to-eat (RTE) products is often

based on controlling *Listeria monocytogenes* (*Lm*), not organoleptic concerns. According to the commenter, the meat and poultry industry often applies a "Use By" date to ensure refrigerated RTE product safety. Therefore, the commenter argued, consumers should not be told that it is safe to consume refrigerated RTE meat and poultry products after the "Use By" date. The commenter argued that a distinction should be made between a "Best if Used By" date, where the product may be consumed after the date if there are no signs of spoilage, and a "Use By" date, where product should not be consumed after the date even if there are no signs of spoilage.

Response: FSIS disagrees with the comment. While some establishments may use date labeling to manage safety of refrigerated RTE meat and poultry products - not all establishments do. Only establishments producing products with an antimicrobial agent or process must establish the shelf-life of the product in order to document, either in their HACCP plan, Sanitation Standard Operating Procedures, or prerequisite program, that their antimicrobial agent or process is effective in suppressing or limiting growth of *Lm* (see 9 CFR 430.4(b)(1) and (2)). In addition, for those products, FSIS recommends but does not require "Use By" dating on labels.⁸

⁸ See Controlling *Listeria monocytogenes* in Post-lethality Exposed Ready-to-Eat Meat and Poultry Products at

Comment: One consumer was confused by the statement that except for infant formula, product dating is not required by Federal regulations. The consumer questioned how this statement could be true if FSIS requires certain products to be labeled with a "pack date."

Response: As mentioned above, FSIS added a footnote to the fact sheet to clarify that while FSIS does not require date labeling for food quality or food safety, FSIS does require a "pack date" for poultry products and thermally processed, commercially sterile products to help the Agency identify product lots and facilitate trace-back activities in the event of an outbreak of foodborne illness.⁹

Comments: Several commenters stated that FSIS could do more to ensure that safe, wholesome food is not wasted by providing consumer education about the meaning of date labels.

Response: Now that the fact sheet is finalized, FSIS intends to include more information about food product dating in the Agency's presentations and webinars on labeling and labeling features.

Additional Public Notification:

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this

<https://www.fsis.usda.gov/wps/wcm/connect/d3373299-50e6-47d6-a577-e74a1e549fde/Controlling-Lm-RTE-Guideline.pdf?MOD=AJPERES>.

⁹ See 9 CFR 381.126 and 9 CFR 431.2(e).

Federal Register publication on-line through the FSIS Web page located at: <http://www.fsis.usda.gov/federal-register> .

FSIS will also announce and provide a link to it through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <http://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

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Done at Washington, DC on:

Carmen M. Rottenberg,
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